

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER

ITA No. 7638/DEL/2018 [A.Y. 2015-16]

M/s Apple Sponge and Power Ltd
B-16, Sector - 2, Noida
Uttar Pradesh

Vs.

The Dy. C.I.T
Central Circle
Noida

PAN : AAFCA 1965 L

(Applicant)

(Respondent)

Assessee By : Shri Amit Goel, CA
Shri Nippun Mittal, CA

Department By : Shri Zahid Parvez, Sr. DR

Date of Hearing : 23.05.2022
Date of Pronouncement : 25.05.2022

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the Id.
CIT(A)-IV, Kanpur dated 10.10.2018 pertaining to Assessment Year 2015-
16.

2. The grievances of the assessee read as under:

"1(a) On the facts and circumstances of the case and in law, the initiation of assessment proceedings and issue / services of notices are not in accordance with the provisions of law and accordingly the assessment order passed on the foundation of such notice(s) is liable to be quashed and CIT(A) erred in not holding so.

(b) On the facts and circumstances of the case and in law, no notice u/s 143(2) was issued and served within the stipulated statutory time and accordingly the assessment order passed by the assessing officer is liable to be quashed and CIT(A) erred in not holding so.

(c) On the facts and circumstances of the case and in law, the assessment order passed by the assessing officer is without jurisdiction and CIT(A) erred in not holding so.

2. On the facts and circumstances of the case and in law, the CIT(A) has erred in confirming addition of unsecured loans of Rs.4,41,71,480/- made by the assessing officer as alleged unexplained cash credits u/s 68 of Income Tax Act. 1961.

3. On the facts and circumstances of the case and in law, the various alleged adverse inferences drawn / reasons given by the CIT(A) for making / confirming additions are erroneous and not sustainable in law.

4. On the facts and circumstances of the case and in law, the assessment order passed by the assessing officer is contrary to the provisions of section 153D of the Income Tax Act, 1961 and CIT(A) erred in not holding so.

The appellant craves leave to add one or more ground of appeal or to alter / modify the existing ground before or at the time of hearing of appeal.

The aforesaid grounds of appeal are without prejudice to each other."

3. Briefly stated, the facts of the case are that a search and seizure operation u/s 132 of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'] was conducted on 11.11.2014 on the premises of the assessee. Satisfaction note was recorded on 02.12.2016 as under:

"Satisfaction Note for the initiation of proceedings u/s 153C of the Income tax Act, 1961 in the case M/s Apple Sponge & Power Limit., T-1 &

3, 3rd Floor, Anupam Plaza, III Crossing, HauzKhas, Delhi - 16
AAFCA1965L

A search & seizure operation u/s 132 of the Income Tax Act, 1961 was conducted on 11/11/2014 on the premises of the assessee comprising Apple Group of cases. The group popularly known as 'Apple Group of Companies'(AGC) is a diversified group with multiple business interests and was established in 2000 as Apple Group of Companies . The group is presently engaged in various businesses & deal in various different fields like metal (mainly iron & steel), coal, construction, commodities trading (mainly includes steel & iron, coal & Iron ore) etc. at Noida (where its Corporate office & Headquarters are located), Bellary (Karnataka), Anantpur (Andhra Pradesh), Hyderabad, Mumbai etc.

M/s Apple Sponge & Power Limit is one of the Group companies. During the course* of search operation, various incriminating documents belonging to M/s Apple Sponge & Power Limit was found & seized.

2. Search action under section 132 of the Income Tax Act, 1961 has been conducted on F-22, Model Town-II, New Delhi-110009 on 11.11.2014. During the course of search action, consolidated stock statement of (Power Division) for the period 01.4.2014 to 31.08.2014 was found and seized and marked as Page 28 of Annexure A-I. The said page shows the consumable stores amounting to Rs. 39(00,000/- in power plant which was held by the assessee as opening stock as well as closing stock. Further,

Page 32 of A T contains details of Sponge and Re-rolling in which interest on 30.00 @ 15% has been calculated. In addition to above, several incriminating documents were found and seized i.e LP- A-I page 1-10, 14-31, BK-1 , Page 03, (back side) page 8, back page of 10 & 15,16,17,18 23 etc which indicates transactions with the related group companies.

2.1 The hard disks found from the office premises of Apple Group at B-16, Sector-2, Noida on 11.11(2014 were scanned (namely Hard disk no - AW5/A-7/HDD of Sh. Amit Choudhary computer) and on perusal of the books of accounts, it has been gathered that the company has taken unsecured loans from the following lenders which were outstanding as on 31/03/2014:

Sr.No.	Particulars	Amount [Rs.]
1.	Jet Speed Tradecom Pvt Ltd	6,00,000
2.	Shirin Exports Pvt Lts	10,78,00,000
3.	Vigorous Trade Link Pvt Ltd	11,70,00,000

2.1 Therefore, on 24.02.2015 show cause notice vide F.No. DDITT/NOIDA/Apple/2014- 15/312 was personally served at the office of Apple group at B-16, Sector-2, Noida where the assessee has been specifically asked to prove the identity, creditworthiness

and genuineness of the above lenders who have lend such huge amount to the group entities of Apple Group. But, no reply was Hied. As the allegation of ploughing back the unaccounted cash in various group companies from bogus and non-existant Kolkata, Muzzafnagar and delhi based companies in the form of unsecured loans has been proved by conducting the spot investigation too.

2,3. The hard disks found from the office premises of Apple Group at B-16, Sector-2, Noida on 11:11.2014 were scanned. On scanning of the hard disks (namely Hard disk no -AW-5/A- 7/HDD of Sh. Amit Choudhary computer), the books of accounts of few companies were found. On perusal of. the books of account of the group companies/entities, it has seen found that like the other Apple Group Companies, the other group entities have also received huge amount of share premium. Keeping in view of the history of proven non-existing, bogus companies of Kolkata, providing accommodation entries in lieu of cash made available from field enquiry, it is concluded that the entire share capital and share premium tabulated below as under squarely comes under the purview of accommodation entries and your unaccounted money, reinvested by your group. For the AY 2013.14,.the figure of Share Capital Amount of Rs. .10,48,02,600/- and Share Premium of Rs. 73,21,07,600/- was found which .needs verification

2.4 The identity, genuineness and credit worthiness of the shareholders have already been enquired during pre-search proceedings and found sham. or bogus. In order to provide another opportunity, show cause notice vide F.No.DDIT-I/NOIDA/Apple/2014-15/312 dated 24.02.2016 have been issued to Sh. Ashish Garg , CEO of Apple Group of companies to prove the identity, creditworthiness and genuineness of the shareholders from whom the above companies have taken such huge amount of share capital and share premium. But, he failed to provide the details.

2.5 Further, it was also found that the company is engaged in making bogus sale/purchase transaction with Apple group of companies, Annexure LP-21 and LP-22 found from the premises No B-16, Sec-2, Noida contain 'c' issued to the parties but no compliance was made.

2.6 Consequent upon the search, survey u/s 133A of the IT Act was conducted at business premise T-1. &3, 3rd Floor, Anupam Plaza, ITT Crossing, Hauz khas, Delhi-16 & No.43 Balaji Nilaya, Opposite Police Quarter, Raghavendra Colony, 1st stage, Bellary-583101

The cases of this group are interconnected and required deep investigation to arrive at a logical conclusion. As such for taking a logical conclusion in this group of cases, every single seized

document and entry appearing in the seized documents requires deep scrutiny and has its impact on the other cases of the group.

Considering the above facts, I am satisfied that it is a fit case for initiation of proceedings u/s 153C of ^ p investigation and to plug the leaked revenue."

4. Before us, the ld. counsel for the assessee vehemently stated that since satisfaction note is dated 02.12.2016, the block period comprises of Assessment Years 2011-12 to 2016-17, which means that the impugned Assessment Year is part of block period which means that the Assessing Officer ought to have framed assessment u/s 153C of the Act whereas the assessment order has been framed u/s 143(3) of the Act.

5. Further, the Return of Income was filed on 29.09.2015 as it is clear from Para 2 of the assessment order which means that the notice u/s 143(2) of the Act should have been served upon the assessee on or before 30.09.2016 whereas in Para 2 of the assessment order, the Assessing Officer has mentioned that notice u/s 143(2) of the Act was issued on 06.12.2016 which is beyond the period of limitation.

6. The Hon'ble Supreme Court in the case of Lakshman Das Khandelwal in Civil Appeal No. 6261 - 6262 of 2019 order dated 13.08.2019 has held as under:

"8. The law on the point as regards applicability of requirement of notice u/s 143(2) of the Act is quite clear from the decision in Blue Moon's case². The issue that however needs to be considered is the impact of Section 292BB of the Act.

9. According to Section 292BB of the Act, if the assessee had participated in the proceedings, by way of legal fiction, notice would be deemed to be valid even if there be infractions as detailed in said Section. The scope of the provision is to make service of notice having certain infirmities to be proper and valid if there was requisite participation on part of the assessee. It is, however, to be noted that the Section does not save complete absence of notice. For Section 292BB to apply, the notice must have emanated from the department. It is only the infirmities in the manner of service of notice that the Section seeks to cure. The Section is not intended to cure complete absence of notice itself."

7. The Id. DR strongly supported the findings of the Assessing Officer.

8. Having heard the rival contentions, we have carefully perused the orders of the authorities below. We are of the considered view that in the case of a person other than a “Searched Person”, provisions of section 153C of the Act are applicable and in such a case, the date of search or date of requisition, as referred to in Section 153A of the Act is substituted by the date of handing over of documents by the Assessing Officer of the “Searched Person” to the Assessing Officer of the “Other Person”.

9. Since the date of recording satisfaction is 02.12.2016 which falls in the previous F.Y. 2016-17 relevant to Assessment Year 2017-18, the immediately preceding six years are Assessment Years 2011-12 to 2016-17. Thus, the year under appeal clearly falls in the block of six years covered by section 153C of the Act. Thus, the assessment for Assessment Year 2015-16 could have been made only u/s 153C of the Act after compliance of provisions of that section.

10. We draw support from the decisions of the Hon'ble High Court of Delhi in the case of RRJ Securities Ltd 62 Taxmann.com 391 and ARN Infrastructure India Ltd 81 Taxmann.com 260.

11. Assessment order dated 31.12.2016 is framed u/s 143(3) of the Act for the impugned Assessment Year 2015-16. In our considered view, this year falls within the period of six years when counted from the date of recording satisfaction note u/s 153C of the Act which is the deemed date of search.

12. The Act has been amended recently by the Finance Act, 2017 with prospective effect i.e. Assessment Year 2018-19.

13. Therefore, we hold that the assessment order framed u/s 143(3) of the Act on the facts of the case is invalid. We, accordingly, hold the assessment order as bad in law. A perusal of the grounds taken before the Id. CIT(A) show that this issue was raised before the Id. CIT(A). Therefore, the submissions of the Id. DR do not hold any water.

14. Since we have quashed the assessment order, we do not find it necessary to dwell into the merits of the case.

15. In the result, the appeal of the assessee in ITA Nos. 7638/DEL/2018 is allowed.

The order is pronounced in the open court on 25.05.2022 in the presence of both the rival representatives.

Sd/-

**[N.K. CHOUDHRY]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 25th May, 2022.

VL/

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	